

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SCOTT ALLEN FOSTER,

Petitioner,

v.

CIV 18-0429 JB/KBM

FNU MULHERON, *Warden*,
ATTORNEY GENERAL FOR
STATE OF NEW MEXICO

Respondents.

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

THIS MATTER comes before the Court on Petitioner's Motion for Appointment of Counsel (*Doc. 3*). A defendant who seeks habeas relief has no constitutional right to counsel, and the decision whether to appoint counsel is left to the court's discretion. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of the proceedings where an evidentiary hearing is required. See e.g., *United States v. Moya-Breton*, 439 F. App'x 711, 716 (10th Cir. 2011) (citing *Engberg v. Wyoming*, 265 F.3d 1109, 1122 & n. 10 (10th Cir. 2001) and Rule 8(c), RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS), cert. denied, 132 S. Ct. 1775 (2012). The Rules do not call for expansion of the record or an evidentiary hearing until after this Court has conducted a review of the claims in light of the record and Respondent's Answer, which was only recently filed. Accordingly, Petitioner's request is premature and is hereby **denied without prejudice**.


UNITED STATES MAGISTRATE JUDGE